

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROY W. PETTIE, and E. MARIE PETTIE,

Plaintiffs,

v.

SAXON MORTGAGE SERVICES, WELLS
FARGO, FIRST HORIZON HOME LOAN
CORPORATION, GERALD L. BAKER,
FEDERAL RESERVE BANK, JANET L.
YELLEN, and JOHN AND JANE DOES (1-
25),

Defendants.

Case No. C08-5089RBL

ORDER DENYING SAXON
MORTGAGE SERVICES' MOTION
FOR INVOLUNTARY DISMISSAL

THIS MATTER comes before the Court on Defendant Saxon Mortgage Services' Motion for Involuntary Dismissal [Dkt. #22]. The Court has reviewed the materials submitted in support of, and in opposition to, the motion. For the following reasons, the motion to dismiss is DENIED.

BACKGROUND

The relevant facts are uncontested. Plaintiffs brought this case *pro se*. On March 27, 2008, they filed a motion for leave to amend their original complaint [Dkt. #6]. The Court granted the motion [Dkt. #8] on May 7, and Plaintiffs' First Amended Complaint [Dkt. #10] was submitted to the Court on May 22.

1 On August 14, Saxon Mortgage Services (Saxon) filed a Fed. R. Civ. P. 12(b)(6) Motion to Dismiss [Dkt.
2 #16]. Rather than address the substance of that motion to dismiss, Plaintiffs requested leave to amend their
3 complaint and add a claim under the Real Estate Settlement Procedures Act (RESPA). The Court granted
4 such leave to amend on October 8. Approximately one and one-half months later, on November 24, Saxon
5 filed this motion for involuntary dismissal pursuant to Fed. R. Civ. P. 41(b). The motion is based primarily
6 on the fact that, when the motion was filed, Plaintiffs had not yet filed a second amended complaint. Saxon
7 further argues that Plaintiffs failed to prosecute the case because they knew about the requirements for a
8 RESPA claim since January 2008. On December 15, Plaintiffs filed a Response to Saxon's Motion to
9 Dismiss [Dkt. #23] and their Second Amended Complaint [Dkt. #25].
10
11

12 ANALYSIS

13 Fed. R. Civ. P. 41(b) permits dismissal where a party "fails to prosecute or to comply with [the
14 Federal Rules of Civil Procedure] or a court order." The Court weighs five factors to determine if
15 involuntary dismissal for want of prosecution is proper pursuant to Rule 41(b). Specifically, the Court
16 considers "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
17 docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring disposition of cases on
18 their merits; and (5) the availability of less drastic alternatives." *Yourish v. California Amplifier*, 191 F.3d
19 983, 990 (9th Cir. 1999) (citing *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)).
20
21

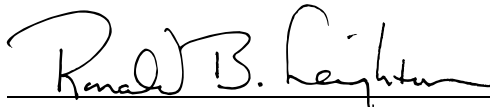
22 On balance, these five factors weigh against dismissal. Saxon's analysis universally underestimates
23 the magnitude of Plaintiffs' assertion that they are not attorneys. It is certainly true that *pro se* plaintiffs
24 should not, and will not, be allowed to trample roughshod over the Court's rules. It is also true that
25 Plaintiffs' conduct has not been nearly egregious enough to warrant dismissal. Dismissal with prejudice
26 under Rule 41(b) is a serious sanction that should be reserved for outrageous situations. Here, Plaintiffs
27 have no pattern of tardiness and Saxon has not alleged any additional misconduct. The sole allegation
28

1 against them is failure to comply with one Court order.¹ That order, however, did not specify a due date.
2 Plaintiffs' delay, if anything, violated common sense and the general need for diligence. In the grand
3 scheme of this case, the expeditious resolution of litigation has not been substantially impeded by Plaintiffs'
4 late filing. Likewise, the Court's ability to manage its docket has not been jeopardized. Indeed, the Court
5 has already issued an Order Granting Defendant First Horizon Home Loans Corporation's Motion to
6 Continue Case Schedule [Dkt. #31]. Saxon has alleged significant prejudice, a factor the Court weighs
7 heavily. The vast majority of the prejudice alleged by Saxon, however, is mere delay. Further,
8 expenditures for continued litigation do little to establish prejudice. Saxon's underlying ability to
9 effectively defend itself has not been lessened. Finally, Saxon alleges that the public policy favoring
10 disposition of cases on the merits does not preclude dismissal when the other factors strongly favor
11 dismissal. *Yourish*, 191 F.3d at 992. Here, the other factors do not favor dismissal. Moreover, this
12 factor's significance is even greater in the context of *pro se* litigants. The Court need not consider whether
13 less drastic alternatives exist, because it would be inappropriate to issue any sanctions in these
14 circumstances.

18 CONCLUSION

19 For the foregoing reasons, Defendant Saxon's Motion to Dismiss [Dkt. #22] is DENIED. Saxon's
20 responsive pleading to the Second Amended Complaint is due February 27, 2009.

21 Dated this 20th day of February, 2009.

23
24 

25 RONALD B. LEIGHTON
26 UNITED STATES DISTRICT JUDGE

27
28 ¹Saxon's allegation that Plaintiffs knew the facts necessary for a RESPA claim since January 2008 is intimately related to the late filing and will be treated as such. The Court granted Plaintiffs' Motion for Leave to Amend, the fact that Saxon believes Plaintiffs should have filed a RESPA claim one year ago is not independently significant.